

In response to your request, the Utah Department of Transportation (UDOT) is sending an "Application for Determining Disadvantaged Business Enterprise Eligibility, Schedule A - Form R-816" which includes the "Disadvantaged Business Enterprise Program Definitions and Eligibility Standards". You are encouraged to carefully study the definitions and eligibility standards.

If you desire additional information or need help with the DBE application form, UDOT will schedule an orientation meeting at a time which may be convenient for you on a week day between the hours of 8:00 A.M. and 5:00 P.M. To schedule a meeting with UDOT's Civil Rights Office, call (801) 965-4208.

If you are not a resident of Utah, your firm must be certified to DBE status by your home state Department of Transportation. An on-site review of all firms applying for DBE status is required. For non-resident firms, UDOT relies upon the home state to have made an on-site review. If you are an out-of-state applicant, UDOT requires that you submit a current home state DBE certification and verification that the home state has conducted an on-site review.

UDOT authorizes DBE participation **ONLY** for the type(s) of work for which a DBE certified firm is licensed and/or qualified to perform. Out-of-state firms are not required to hold a Utah professional license to be certified to DBE status or, once certified, to bid on UDOT projects. However, before a contract or subcontract shall be approved and before performance may begin on a UDOT project, an out-of-state firm must have proper Utah licensing. To obtain licensing information call (801) 530-6628 or write: Utah Department of Commerce, Division of Professional Licensing, 160 East 300 South, P.O. Box 45802, Salt Lake City, Utah 84145.

Prequalification is not required of subcontractors. It is the prime contractor's responsibility to determine the financial and performance capabilities of a bidding subcontractor. Prequalification is not required of bidders as prime contractors on projects under \$500,000.00. However, prequalification is required of bidders as prime contractors on projects over \$500,000.00. To receive prequalification information call (801) 965-3835 or write: Utah Department of Transportation, Attention: UDOT Construction Administrative Secretary

UDOT advertises project bid information in two local newspapers, the Salt Lake Tribune and the Deseret News, in the legal section of the Saturday edition. UDOT also mails to interested contractors a "Notice to Contractors" which includes the bid information and a list of the individual bid items. To receive information about the "Notice to Contractors" call (801) 965-4079 or write: Utah Department of Transportation, Attention: Engineering Services Division. This is available on the Internet.

UDOT's "Planholder's List" is also available on the Internet. UDOT's Internet address is:

www.sr.ex.state.ut.us

Written requests for information should be sent to:

Utah Department of Transportation
Box 141520
4501 South 2700 West
Salt Lake City, UT 84114-1520

If I can be of assistance, please feel free to call me at (801) 965-4102.

Charles K. Larson
Civil Rights Manager

UTAH DEPARTMENT OF TRANSPORTATION
APPLICATION FOR DETERMINING DISADVANTAGED BUSINESS ENTERPRISE (DBE) ELIGIBILITY
SCHEDULE A - UDOT FORM R-816

UDOT shall safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential business or personal information consistent with Federal, state, and local law. However, UDOT is required to cooperate fully with and promptly with Department of Transportation and recipient compliance reviews, certification reviews, investigations, and other requests for information.

An integral part of the DBE certification process is an on-site evaluation to allow the Civil Rights Office an opportunity to become acquainted with the principals and the operations of the firm. After UDOT has received and evaluated the application information, an on-site review will be scheduled at a time convenient to all parties on a weekday between the times of 8:00 A.M. and 4:00 P.M.

The DBE application form is a request for information. You are requested to enter the appropriate information in the space provided for every application item. If there is not sufficient space to complete any item, attach additional pages as necessary. DO NOT LEAVE ANY ITEM BLANK. Some of the application items may not be applicable to your particular situation. If the answer to an application item is "NOT APPLICABLE" or "NONE", please indicate such an answer on the application form.

The DBE application form is a request for documentation. Please submit all requested documents that apply to your particular situation. Please identify on the attachments the item being completed. Failure to submit documentation will delay the evaluation of your application.

Please print or type all responses.

SECTION I. GENERAL INFORMATION

1. Authorized Name of Firm: _____
2. Street Address of firm: _____
3. Mailing address: (if different): _____
City _____ State _____ ZIP _____
4. Business telephone number: (_____) _____
FAX number: (_____) _____
E-mail Address: _____

5. Name of contact person: _____
6. Name of person(s) who prepared this application: _____
7. Under which category are you seeking certification? Check appropriate box(es)
(Also use the two-letter membership status codes [WO, HI, AI, ND, etc.] when responding to other questions regarding "membership status code".

- ☐ Women.....WO
- ☐ Minority: (check appropriate membership status below.)
- ☐ Hispanic American ... HI ☐ Asian-Pacific American..... AP
- ☐ Black American BL ☐ Subcontinent Asian American.... AI
- ☐ Native American..... NA
- (Attach documentation showing membership status)
- ☐ Other Disadvantaged..... OD
- Note: If you are claiming to be disadvantaged based on other than female or minority status, refer to the standards in the enclosed "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs, Appendix E to Part 26, Individual Determination of Social and Economic Disadvantage".
- Non-Disadvantaged..... ND
- Note: For "membership status" definition only.

8. List all owners, key managers/supervisors and, if applicable, corporate officers, and show their citizenship status, sex and membership status.

Name	U.S. Citizen Yes/No	Sex Male/Female	Membership Status Code
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(For owners who are not U.S. Citizens, attach proof of status as lawful permanent resident)

9. Have there been any changes in the ownership of this firm within the last three years?

Yes ☐ No ☐ If yes, explain the changes. _____

10. Date business was established: _____

11. List any business names previously used: _____
- _____

12. Legal Structure of firm:

☐ Sole Proprietorship ☐ Partnership ☐ Corporation
☐ Limited Liability Company (LLC)
☐ Other (specify) _____

13. Federal Identification Number: _____

14. What is the average annual number of employees on payroll?

Full time _____ Part time _____

15. Is business located in someone's home? Yes No ☐

If yes, provide:

Name of home owner(s) _____

Is rent charged for the use of home office space? Yes ☐ No ☐

(Provide a copy of lease agreement if available)

16. If business is located outside of home, provide the following:

Name of building owner(s): _____

(Provide a copy of the lease agreement)

Do any other firms share the same office space? Yes ☐ No ☐

If yes, provide the following:

Name of other firm(s): _____

Owner(s) of other firm(s): _____

Other firm's line of business: _____

Are any other firms located within the same building, but having separate office space?

Yes ☐ No ☐

If yes, list other firms: _____

17. Do you own or lease any shop or yard space for storage of tools/vehicles/equipment?

Yes ☐ No ☐

If yes, is this space owned or leased? Owned ☐ Leased ☐

If owned, provide proof of ownership.

If leased, provide copy of lease agreement

Provide address/location of any such owned or leased space:

18. Is this firm certified by the Small Business Administration (SBA)?
- a. SBA 8(a) certified firm? Yes [] No []
- b. Small Disadvantaged Business (SDB) ? Yes [] No []
(If yes, please attach copy of current SBA certification)
19. If this firm is certified as a Disadvantaged Business or Minority Business or Women Business by any other federal, state or local agency, list agency(s) below.
-
-

NOTE:

- a. If your home state is Utah and you apply for DBE certification with another Federal, State, or local agency, UDOT is required by CFR 49, Part 26.109 to cooperate and share information. UDOT may consider your application with another agency as implied consent to share information with that recipient.
- b. If your home state is not Utah, you must be certified to DBE status by the Department of Transportation in your home state.

Submit with this application a copy of current DBE certification issued by the home state.

- c. Federal Regulations require that an on-site evaluation is performed on all firms being certified to DBE status. UDOT relies on the home state to perform the on-site evaluation.

Submit with this application verification from your home state that an on-site review has been conducted by the certifying agency.

NOTICE OF RIGHT TO DENY DBE CERTIFICATION

UDOT reserves the right to deny DBE certification to a firm notwithstanding the applicant firm may be certified by SBA, its home state, and/or other federal, state, or local agencies.

20. Has this firm or any of its owners, members of the Board of Directors, officers or management personnel ever been denied certification/recertification or been decertified as a DBE, MBE or WBE by any agency in any state? THIS WOULD INCLUDE CERTIFICATION DENIALS OR DECERTIFICATIONS OF ANY FIRMS WITH WHICH THE OWNERS OR MANAGERS OF THIS APPLICANT FIRM WERE PREVIOUSLY INVOLVED. Yes [] No. []
If yes, provide copies of denial/decertification correspondence.
21. Does this firm have any DBE applications pending in any other states or agencies?
Yes [] No []
If yes, list the states and agencies. _____
-

SECTION II. FINANCIAL INFORMATION

22. Provide the following banking information:

Name of financial institution where you have business checking account(s).

Name of contact person: _____

Address: _____ Phone: _____

Mail to your financial institution the "Financial Institution Authorization" form. (Sheets 26, 27, and 28)

23. Does your firm normally provide a performance bond for sub/supply contracts?

Yes [☐] No [☐]

If yes, please provide the following information:

Bonding company: _____

Name of agent: _____

Address: _____ Phone: _____

Mail to your bonding company the "Bonding Company Authorization" form.
(Sheets 29, 30 and 31)

24. Provide the following insurance information:

Insurance company: _____

Name of agent: _____

Address: _____ Phone: _____

Does your firm carry "key-person" life insurance on any of the owners or employees?

Yes [☐] No [☐] If yes, provide the names and amount of insurance coverage carried on each individual.

25. Itemize contributions/investments of cash, equipment, real estate, expertise or other consideration used by each owner to acquire ownership. List the value of each contribution, FOR CASH, SHOW ORIGIN AS JOINT/PERSONAL SAVINGS OR CHECKING ACCOUNT, LOAN, ETC. FOR EQUIPMENT, LIST THE ACTUAL ITEMS, VALUE OF EACH PIECE OF EQUIPMENT AND PROOF OF PRIOR OWNERSHIP. FOR REAL ESTATE AND FOR OTHER, PROVIDE A DESCRIPTION, VALUE AND PROOF OF PRIOR OWNERSHIP. Attach additional pages if necessary.

a.	Name: _____	b.	Name: _____
	Dollars: \$ _____		Dollars: \$ _____
	Equipment: \$ _____		Equipment: \$ _____
	Real Estate: \$ _____		Real Estate: \$ _____
	Other: \$ _____		Other: \$ _____
	TOTAL \$ _____		TOTAL \$ _____
c.	Name: _____	d.	Name: _____
	Dollars: \$ _____		Dollars: \$ _____
	Equipment: \$ _____		Equipment: \$ _____
	Real Estate: \$ _____		Real Estate: \$ _____
	Other: \$ _____		Other: \$ _____
	TOTAL \$ _____		TOTAL \$ _____

Provide documentation to prove all capital contributions, such as copies of: canceled checks, deposit slips, bills of sale, purchase agreements, receipts, or other evidence for each contribution or investment made to acquire ownership in this firm.

26. Summary total of all contributions and investments shown in Item 25 above used to acquire ownership in this firm.

Dollars: \$ _____
Equipment: \$ _____
Real Estate: \$ _____
Other: \$ _____
TOTAL \$ _____

27. Identify any capital used by an owner which was originally received as a gift or inheritance.

Name of source: _____ Amount: \$ _____

Explain any stipulations/conditions attached to this gift/inheritance when it was received:

28. Identify all sources, amounts and purposes of any money loaned to firm other than from your current banking institution. Provide copies of all loans and security/collateral agreements.

Source	\$ Amount	Purpose	Signature on Loan
--------	-----------	---------	-------------------

Note: If signatures are other than the owners, explain the signator's relationship to this firm or the owners:

29. List the three largest (sub)contracts completed in the past three years and show the month and year of completion:

a. Prime Contractor/Owner _____

Amount of your (sub)contract: \$ _____ Date: (mo/yr) _____

Type of work you performed: _____

Project Location: _____

b. Prime Contractor/Owner _____

Amount of your (sub)contract: \$ _____ Date: (mo/yr) _____

Type of work you performed: _____

Project Location: _____

c. Prime Contractor/Owner _____

Amount of your (sub)contract: \$ _____ Date: (mo/yr) _____

Type of work you performed: _____

Project Location: _____

30. Gross Receipts for your past three fiscal/tax years:

Year ending _____	Total Gross Receipts \$ _____
Year ending _____	Total Gross Receipts \$ _____
Year ending _____	Total Gross Receipts \$ _____

Attach a copy of the firm's most current balance sheet.

Attach copies of income tax returns for the last three years.

31. List the total compensation of the owners, officers and managers during the last three years.
Attach additional sheets if necessary.

a. Name _____

Year	Wages	Bonuses	Dividends	Total
------	-------	---------	-----------	-------

b. Name _____

Year	Wages	Bonuses	Dividends	Total
------	-------	---------	-----------	-------

c. Name _____

Year	Wages	Bonuses	Dividends	Total
------	-------	---------	-----------	-------

d. Name _____

Year	Wages	Bonuses	Dividends	Total
------	-------	---------	-----------	-------

e. Name _____

Year	Wages	Bonuses	Dividends	Total
------	-------	---------	-----------	-------

SECTION III. PERSONNEL and MANAGEMENT

32. Identify all individuals or firms who may provide any of the following services to this firm.
- a. External Management or Technical/Computer Service: _____
Annual Fee: \$ _____
 - b. Accounting or Bookkeeping: _____
Annual Fee: \$ _____
 - c. Legal: _____
Annual Fee: \$ _____
 - d. Clerical Support: _____
Annual Fee: \$ _____
 - e. Employee Leasing: _____
Annual Fee: \$ _____
 - f. Other: (specify) _____
Annual Fee: \$ _____

33. List management personnel who control the following work areas:

Attach a current, detailed education, training and work history resume for each person listed. The work history must include the names of firms, dates of employment, specific duties handled on each job, and licenses and/or certifications held.

- a. Financial Decisions: (responsibility for signing checks, acquisition of loans, lines of credit, and bonding, purchase and rental of equipment, purchase of supplies, etc.) Show membership status code and sex or those persons not already identified in Item 8 on Sheet 2 of 34 Sheets.

Name	Job Title	Hours Per Week	Membership Status Code	Sex M/F

- b. Estimating: (cost estimates, bid preparation or negotiations)

Name	Job Title	Hours Per Week	Membership Status Code	Sex M/F

c. Hiring/Firing of Management Personnel:

Name	Job Title	Hours Per Week	Membership Status Code	Sex M /F
------	-----------	----------------	------------------------	----------

d. Field Production/Operations Supervisor: (overall general site supervision scheduling, project management services)

Name	Job Title	Hours Per Week	Membership Status Code	Sex M/F
------	-----------	----------------	------------------------	---------

e. List All Field Superintendents/Foremen:

Name	Job Title	Hours Per Week	Membership Status Code	Sex M/F
------	-----------	----------------	------------------------	---------

f. Contract Signature Authority: (contract execution, bid submission)

Name	Job Title	Hours Per Week	Membership Status Code	Sex M/F
------	-----------	----------------	------------------------	---------

g. Office Management:

Name	Job Title	Hours Per Week	Membership Status Code	Sex M/F
------	-----------	----------------	------------------------	---------

h. Marketing and Sales:

Name	Job Title	Hours Per Week	Membership Status Code	Sex M/F
------	-----------	----------------	------------------------	---------

i. Purchasing of Major Items: (supplies/equipment)

Name	Job Title	Hours Per Week	Membership Status Code	Sex M/F
------	-----------	----------------	------------------------	---------

- j. Holder of Any Licenses, Permits, or Certification Necessary for Business.
Submit a copy of all licenses, permits, and certifications.

Name	Job Title	License or Certification Held	Membership Status Code	Sex M/F

34. Do any of the owners, officers, directors or any of the management personnel listed in question #33 above have ownership in, or maintain a present business relationship with any other firm? Relationships may include, but are not limited to employment, shared office, storage yard, and warehouse space, equipment, employees, legal counsel or accounting.

Yes [☐] No [☐]

If yes, identify the other business(es) and the person (s) and indicate the individuals function or role in the other business.

35. Do the disadvantaged owners have non-disadvantaged relatives (spouse, parents, in-laws, children, etc.) that are involved in the applicant firm in any capacity?

Yes [☐] No [☐] If yes, provide the following:

- Names of relatives
- Relationship(s) to owner
- Relative's role in this company
- Number of hours per week devoted to this company

36. Do the disadvantaged owners of this firm have male relatives (spouse, parents, in-laws, children, etc.) that are involved (as an owner, officer, employee, or etc.) with another construction or supply company in any capacity?

Yes [☐] No [☐] If yes, provide the following:

- Name of non-minority/male relative
- Relationship to owner
- Role in other company
- Name of other company

SECTION IV. LEGAL STRUCTURE

CORPORATIONS COMPLETE ITEMS 37-39:

Attach copies of the following corporate documents:

Articles of Incorporation * By-Laws * Initial organizational minutes * All agreements pertaining to stock ownership and voting rights * Proof of stock purchase * Stock Certificates (both sides) * Stock Transfer Ledger * Federal Income Tax Returns for the last three years including all attached schedules * Current financial statement * Director and stockholder minutes for the last three years * Profit sharing agreement * Buy out plan

Attach copies of the following personal documents:

Personal Federal Income Tax Returns for all owners for the last three years including attached schedules

37. List the number of shares issued and outstanding:
(Provide membership code and sex if not provided in an earlier item)

Name of Shareholder	Membership Status Code	Sex	Town & State of Residence	# of Shares	(Common/ Preferred)

38. Identify the corporate officers:
(Provide a current detailed education, training, and work history resume for any person for whom a resume has not already been requested. Also, provide the membership code and sex for any persons not already identified in previous items.)

Name	Date Elected	Membership Status Code	Sex	Town & State Of Residence
President:				
Vice President:				
Secretary:				
Treasurer:				
Other: (specify)				

39. Identify the current Board of Directors:

(Provide a current detailed education, training, and work history resume for every person for whom a resume has not already been requested. Also, provide the membership code and sex for any persons not already identified in previous items.)

Name	Date Elected	Membership Status Code	Sex	Town & State of Residence

PARTNERSHIPS COMPLETE ITEMS 40-41:

Attach copies of the following partnership documents:

Partnership agreement and amendments * Current financial statement * Partnership's Federal Income Tax Returns for last three years * Profit sharing agreements * Buy out agreements * Personal Federal Income Tax Returns for all partners for last three years

40. Identify all Partners.

(Provide current detailed experience resumes for each person for whom a resume has not already been requested. Also, provide the membership code and sex for any persons not already identified in previous items.)

Name	Date Became Partner	Membership Status Code	Sex	Town & State of Residence

41. If a corporation is a general partner, list the percentage of shares in the corporation which are owned by each disadvantaged group member. Show the membership code and sex of any persons not previously identified in prior items.

Name	Percentage of Ownership	Membership Status Code	Sex

42. If any of the general or limited partners obtained their interest within the last three years, complete the following:

Name	Date Acquired	Purchase Price	From Whom Purchased
------	------------------	-------------------	------------------------

PROPRIETORSHIPS COMPLETE ITEM 43.

Attach copies of the following proprietorship documents:

Business licenses * Contractors license * Current financial statement * Personal Federal Income Tax returns and attached schedules for the last three years

43. If business changed ownership within the last three years state the following:

Date title was transferred to present owner: _____

Name(s) of previous owner(s): _____

If business was purchased, attach a copy of the bill of sale, purchase agreement, financing agreement, or other appropriate documentation.

LIMITED LIABILITY COMPANIES COMPLETE ITEMS 44-45:

Attach copies of the following limited liability company documents:

Articles of Organization * Business licenses * Contractors license * Profit sharing agreements * Buy out agreements * Current financial statement * LLC's Federal Income Tax returns for the last three years * Personal Federal Income Tax returns and attached schedules for the last three years

44. Identify the Members of the Limited Liability Company.

(Provide current detailed experience resumes for each person for whom a resume has not already been requested. Also, provide the membership code and sex for any persons not already identified in previous items.)

Name	Date of Membership	Membership Status Code	Sex	Town & State of Residence
------	-----------------------	---------------------------	-----	------------------------------

45. If business changed ownership within the last three years state the following:

Date title was transferred to present owner: _____

Name(s) of previous owner(s): _____

If business was purchased, attach a copy of the bill of sale, purchase agreement, financing agreement, or other appropriate documentation.

SECTION V. MANUFACTURERS, SUPPLIERS AND/OR DEALERS COMPLETE ITEMS 46-51:

46. Indicate the type of supplier:

Manufacturer ☐ Distributor ☐ Dealership ☐

Manufacturing rep ☐ Wholesaler ☐ Franchise ☐

Other ☐ (specify) _____

Provide copies of all agreements such as supplier, licensing, dealership, franchise, etc.

47. Manufacturing/warehousing facilities

a. If manufacturer, address/location of factory:

b. If other type of supplier, address/location of warehouse: _____

Is warehouse: Owned ☐? Leased ☐?

If leased, include a copy of the lease agreement

48. List the products you stock, the quantity generally kept on hand and the approximate value.

Product	Quantity	\$ Value
---------	----------	----------

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

49. Does your business take ownership title to the goods before sale to customers?

Yes ☐ No ☐

50. Does your business insure these goods for damage, theft or fire before delivery to customers?

Yes ☐ No ☐

51. If a customer is dissatisfied due to untimely delivery, damaged or defective goods, or failure to perform, to whom does the customer have legal recourse?

Your business? Yes [] No []

Product Manufacturer? Yes [] No []

Other [] (specify) _____

Explain if customer has legal recourse to more than one party:

SECTION IV. EQUIPMENT

52. List pieces of equipment valued at over \$1,000, or any item that has to be licensed/registered. (Attach copies of title and registration for all vehicle and trailers, bills of sale or purchase agreements and canceled checks for payments made for equipment brought within the last three years.)

Equipment Name/Type	Serial Number	Date of Purchase	Purchase Price

53. Summarize inventory of small hand and power tools below, by type and approximate value.

Type of Tools	Approximate Value

54. List equipment valued over \$1,000 leased or rented within the last year. (Attach copies of lease agreements and canceled checks for payment of equipment leases.)

Equipment Name/Type	From Who Leased?

SECTION IV. NATURE OF FIRM'S BUSINESS

55. Type(s) of work the firm prefers to perform. _____

56. List specific type(s) of work for which you request DBE certification. _____

UDOT WILL GRANT DBE CERTIFICATION FOR TYPE(S) OF WORK FOR WHICH YOU ARE LICENSED AND/OR QUALIFIED TO PERFORM. FOR PARTICIPATION TOWARD DBE GOAL, UDOT WILL RECOGNIZE WORK TO BE PERFORMED BY DBE SUBCONTRACTORS ONLY IN THE SPECIFIC TYPES OF WORK FOR WHICH DBE CERTIFICATION HAS BEEN GRANTED PRIOR TO BID OPENING.

57. a. Indicate class of Utah contractor's license held by the firm.

☐ Utah General Engineering Contractor's License
☐ Utah General Building Contractor's License
☐ Utah Specialty Contractor's License

Classification(s) _____

License Number _____

Qualifying Individual for Contractor's License _____

Monetary Limit _____

- b. Out of State Contractor's License

Issued by _____

Nature of Business _____

- c. Business License

Issued by _____

Nature of Business _____

(SUBMIT A COPY OF ALL CONTRACTOR'S AND BUSINESS LICENSES.)

58. What areas in the State of Utah will you work?

- (1) ☐ All of Utah
(2) ☐ North
(3) ☐ North - East
(4) ☐ North - West
(5) ☐ South
(6) ☐ South - East
(7) ☐ South - West
(8) ☐ Wasatch Front

59. Attach a list of the most recent projects on which work has been performed by the applicant firm. Include for each project listed:

- (1) Project name
(2) Contracting agency
(3) Agency address
(4) Responsible person for agency
(5) Prime contractor - if you worked as a subcontractor
(6) Address of prime contractor
(7) Responsible person for prime contractor
(8) Nature of work performed
(9) Dollar amount of contract

DISADVANTAGED BUSINESS ENTERPRISE (DBE) AFFIDAVIT

The undersigned swears that he or she has the authority to sign this affidavit, that he or she has received and read the Disadvantaged Business Enterprise definitions and eligibility standards supplied with the application form, that he or she has read and understands this certification application, that the application responses, the foregoing statements, and the accompanying documents are true, complete, and correct, and that the accompanying documents include all materials requested and/or necessary to identify and explain the ownership and operation of:

(Name of Applicant Firm)

The undersigned, personally and on behalf of the above named firm, agrees:

1. To abide by the requirements of the Disadvantaged Business Enterprise Program and all of the applicable rules/regulations/policy guidelines of the Utah Department of Transportation and the United States Department of Transportation governing the certification process and project activity.
2. To notify the Utah Department of Transportation within ten (10) working days, of any change in the ownership, control, management or status of the firm, and of any denial or decertification of this firm as a DBE by any other certifying agency.
3. That, in order to monitor the status of my firm, the Utah Department of Transportation has the right, from time to time, to conduct a review of the firm's books, contracts, facilities and records and to request and review whatever other additional information as deemed necessary to complete such process.
4. That failure to answer any question or to supply the Utah Department of Transportation with any documentation requested in the application may be cause to deny the certification request.
5. That the Utah Department of Transportation may, for cause, withdraw certification after applying its own approved procedures.
6. That the Utah Department of Transportation may deny certification or rescind certification and initiate action under Federal or Utah State laws concerning false statements, if during or after the certification process, it finds that the undersigned have submitted false, inaccurate or misleading information.
7. That the Utah Department of Transportation has the right to refuse certification of any firm, based on the Department's implementation of the DBE eligibility standards, despite the fact that said firm may be certified by another state or another Federal agency.

By my signature I recognize and accept the seven (7) statements above governing the consideration of this application and the maintenance of my firm's certified status.

Corporate Seal
(Where appropriate)

Signatures of All Owners:

1. Printed/Typed Name of Owner: _____
Owner Signature: _____ Date: _____
2. Printed/Typed Name of Owner: _____
Owner Signature: _____ Date: _____
3. Printed/Typed Name of Owner: _____
Owner Signature: _____ Date: _____
4. Printed/Typed Name of Owner: _____
Owner Signature: _____ Date: _____
5. Printed/Typed Name of Owner: _____
Owner Signature: _____ Date: _____
6. Printed/Typed Name of Owner: _____
Owner Signature: _____ Date: _____
State of _____
County of _____

On this _____ day of _____, _____, before me
appeared (names of all owners above who signed affidavit): _____ Year

known to me to be the person(s) whose name(s) are subscribed on the Affidavit, and
acknowledged to me that they each individually executed the same and were properly
authorized by

Name of Firm

to execute the affidavit and did so of his or her own free act and deed.

Notary Public _____

State of _____

Residing at _____

My Commission expires _____

ADDITIONAL INSTRUCTIONS:

1. You should make a complete copy of this signed application to keep in your files for future reference.
2. Complete, sign, and notarize the AFFIDAVIT on pages 17 and 18.
3. Complete and sign the AFFIDAVIT OF SOCIAL AND ECONOMIC DISADVANTAGE (Sheet 22)
4. Complete and sign the PERSONAL NET WORTH STATEMENT. (Sheets 23, 24, and 25).
5. Complete and sign the FINANCIAL INSTITUTION AUTHORIZATION. (Sheets 26, 27, and 28) Send it to your financial institution for completion. The financial institution authorization is an integral part of the application. A final determination of your DBE status will not be made until the authorization is returned to UDOT.
4. Complete and sign the BONDING COMPANY AUTHORIZATION. (Sheets 29, 30, and 31) Send it to your bonding company for completion. The bonding company authorization is an integral part of the application. A final determination of your DBE status will not be made until the authorization is returned to UDOT. If you have not made arrangements for bonding, please mark "NONE" and return the AUTHORIZATION as a part of your application form.
5. Review the attached document check list (Sheets 32 and 33) and ensure that all requested documentation has been enclosed with the application form. Return the check list as a part of your application form.
6. Mail the completed application form and the accompanying documentation to:

Utah Department of Transportation
Attention: Civil Rights Office
Box 141520
4501 South 2700 West
Salt Lake City, UT 84114-1520

Utah Department of Transportation
Civil Rights Office – DBE Program

Complete this form for: (1) each socially and economically disadvantaged proprietor, (2) each socially and economically disadvantaged limited and general partner whose combined interest totals 51% or more, (3) each socially and economically disadvantaged limited liability member, or (4) each socially and economically disadvantaged stockholder making up 51% or more of voting stock.

Name	Business Phone ()
-------------	------------------------------

Residence Address	Residence Phone ()
--------------------------	-------------------------------

City, State & Zip Code	Business FAX ()
-----------------------------------	----------------------------

Business Name of Applicant	Business E-mail:
-----------------------------------	-------------------------

AFFIDAVIT OF SOCIAL AND ECONOMIC DISADVANTAGE

“In considering whether an owner has experienced social and economic disadvantage based upon the effects of discrimination, the applicant for DBE status shall take into account: whether the owner has held himself or herself out to be a member of a disadvantaged group, has acted as a member of a community of disadvantaged persons, and would be identified by persons in the population at large as belonging to the disadvantaged group.”

I certify that I have read and understand the above statement, CFR 49, Parts 26.5, 26.63, 26.67, and Appendix E to Part 26. . I further certify that I have experienced social and economic disadvantage based on discrimination because of my: (mark all that apply) *(This statement is valid only when signed by the individual claiming social disadvantage)*

..... race ethnicity gender other (Please explain on separate sheet)

Signature: _____

On this _____ day of _____, _____, before me
appeared (names of all owners above who signed affidavit): _____ Year

_____ known to me to
be the person(s) whose name(s) are subscribed on the Affidavit, and acknowledged to me that
they each individually executed the same and were properly authorized by

Name of Firm

to execute the affidavit and did so of his or her own free act and deed.

Notary Public _____

State of _____

Residing at _____

My Commission expires _____

PERSONAL NET WORTH STATEMENT

ASSETS		LIABILITIES	
	(Omit Cents)		(Omit Cents)
Cash on hand and in Banks	\$ _____	Accounts Payable	\$ _____
Savings Accounts	\$ _____	Notes Payable to Banks and Others	\$ _____
	\$ _____	(Describe in Section 1)	_____
IRA or Other Retirement Account	\$ _____	Installment Account (Auto)	\$ _____
	\$ _____	_____	_____
Accounts and Notes Receivable		Installment Account (Other)	\$ _____
(Complete Section 8)	\$ _____	Loan on Life Insurance	\$ _____
Life Insurance -		_____	_____
Cash Surrender Value Only	\$ _____		
	\$ _____	Mortgages on Real Estate	\$ _____
(Describe in Section 2)	_____	_____	_____
Stocks and Bonds			
	\$ _____	(Describe in Section 6)	
(Describe in Section 3)	_____	Unpaid Taxes	\$ _____
Real Estate			
	\$ _____	(Describe in Section 7)	
(Describe in Section 4)		Other Liabilities	\$ _____
Automobile(s) - Present Value	_____		
	\$ _____		
(Describe in Section 5)	\$ _____		
Other Personal Property and			
Other Assets	\$ _____		
Total Assets	\$ _____	Total Liabilities	\$ _____
		Total Net Worth	\$ _____
		(Total assets minus total liabilities)	\$ _____
		Deduct:	
		Equity in Primary Residence	\$ (_____)
		Equity in Applicant Firm	\$ (_____)
		Personal Net Worth	\$ _____

Source of Income		Contingent Liabilities	
Salary	\$ _____	As Endorser or Co-Maker	\$ _____
Net Investment Income	\$ _____	Legal Claims & Judgments	\$ _____
Real Estate Income	\$ _____	Provision for Federal Income Tax	\$ _____
Other Income	\$ _____	Other Special Debt	\$ _____

Section 1. Notes Payable to Bank and Others (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

Section 2. Stocks and Bonds (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 3. Real Estate Owned (List each parcel separately. Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

	Property A	Property B	Property C
Type of Property			
Address			
Date Purchased			
Original Cost			
Present Market Value			
Name and Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Year			
Status of Mortgage			

Section 4. Automobiles (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment, and if delinquent, describe delinquency.)

Section 5. Other Personal Property, Other Assets, and Business(es) other than a Corporation.

(Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment, and if delinquent, describe delinquency.)

Section 6. Unpaid Taxes (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)

Section 7. Other Liabilities (Describe in detail.)

Section 8. Life Insurance Held (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries.)

Section 9. Transfer Within Two Years (Give face amount of transfer, fair market value of transfer, name of recipient of transfer, relationship of recipient, and the reason for transfer.)

I authorize the Utah Department of Transportation, Civil Rights Bureau, DBE Program to verify the accuracy of the statements made in order to determine whether I meet the standards of economic disadvantage for participation in the DBE Program at the Utah Department of Transportation. These statements are true and correct to the best of my belief.

Signature:

Title:

Date:

STOP!!!!!! COPY FINANCIAL AND BONDING FROM DOC. DBEAPSUPP. THE SPACING ON THIS IS WRONG!!

NEW MAILING ADDRESS
UTAH DEPT. OF TRANSPORTATION
CIVIL RIGHTS OFFICE
Box 141520
4501 South 2700 West
Salt Lake City, UT 84114-1520

UTAH DEPARTMENT OF TRANSPORTATION
DBE Certification Application

FINANCIAL INSTITUTION AUTHORIZATION
Page 1

To applicant applying or Disadvantaged Business Enterprise (DBE) certification:

This FINANCIAL INSTITUTION AUTHORIZATION is an integral part of your application for DBE certification. It contains three (3) pages that are numbered as sheets 28, 29, and 30 of 33 Sheets of Form R-816. It is also numbered as pages 1, 2, and 3 of the FINANCIAL INSTITUTION AUTHORIZATION. These three (3) pages must be returned to UDOT before a final determination on your application can be made. Please complete and sign page 1 of this authorization. Send this form to your financial institution. Request the financial institution to complete pages 2 and 3 and to mail the form within seven (7) days to:

Utah Department of Transportation
Attention: Civil Rights Office
Box 141520
Salt Lake City, UT 84114-1520

Dear _____:
(Name of financial institution)

I have authorized the Utah Department of Transportation to see information from your institution regarding the financial ownership and control of my firm.

Please provide the following information to the Utah Department of Transportation as soon as possible so the review of my application for Disadvantaged Business Enterprise status can be continued.
Please mail the completed form to the address shown on the back of the form.

Thank you.

President/Owner signature

Date _____

President/Owner Printed Name

Firm Name

FINANCIAL INSTITUTION AUTHORIZATION

Page 2

THIS SECTION IS TO BE COMPLETED BY YOUR BANKING INSTITUTION:

Name of DBE Applicant Firm: _____

3. Check the type of banking services which you provide to the DBE applicant firm.

1. Checking accounts

[] Payroll Number of authorized signatures _____

[] Regular Number of authorized signatures _____

[] Other Number of authorized signatures _____

Please identify "Other" accounts _____

2. Names of authorized signatures (identify by account type)

4. List any outstanding commercial/business loans by origination date:

Date	Outstanding Balance	Secured? Yes/No	If Secured, What Is Collateral?

Is there a guarantor(s) for any of these loans? Yes [] No []

If yes, names of guarantors _____

COMPLETE REVERSE SIDE OF FORM

FINANCIAL INSTITUTION AUTHORIZATION

Page 3

3. Amount of line of credit: \$ _____

Secured? Yes [] No []

If yes, list collateral: _____

Is there a guarantor(s)? Yes [] No []

Name of guarantors: _____

4. Name(s) of individual(s) signing notes payable:

Bank Name _____

Address _____

City/State/Zip _____

Bank Official _____

(Printed Name)

Date _____

Bank Official _____

(Signature)

Date _____

Mail this completed form to:

Utah Department of Transportation

Attention: Civil Rights Office

Box 141520

4501 South 2700 West

Salt Lake City, UT 84114-1520

NEW MAILING ADDRESS
UTAH DEPT. OF TRANSPORTATION
CIVIL RIGHTS OFFICE
Box 141520
4501 South 2700 West
Salt Lake City, UT 84114-1520

UTAH DEPARTMENT OF TRANSPORTATION
DBE Certification Application

BONDING COMPANY AUTHORIZATION
Page 1

To applicant applying for Disadvantaged Business Enterprise (DBE) Certification:
This BONDING COMPANY AUTHORIZATION is an intregal part of your application for Disadvantaged Business Enterprise (DBE) certification. It contains three (3) pages that are numbered as Sheets 31, 32, and 33 of 33 Sheets of Form R-816. It is also numbered as pages 1, 2, and 3 of the BONDING COMPANY AUTHORIZATION. These three (3) pages must be returned to UDOT before a final determination on your DBE application can be made. Please complete and sign page 3 of this authorization. Send this form to your bonding company. Request the bonding company to complete pages 2 and 3 and to mail the form within seven (7) days to:

Utah Department of Transportation
Attention: Civil Rights Office
Box 141520
Salt Lake City, UT 84114-1520

Dear _____
(Name of Bonding Company)

I have authorized the Utah Department of Transportation to seek information from your institution regarding the bonding relationships of this firm as they relate to ownership and control.

Please provide the following information to the Utah Department of Transportation as soon as possible so the review of my application for Disadvantaged Business Enterprise status can be continued. Mail the completed form to the address shown on the back of the form.

Thank you.

President/Owner Signature

Date

President/Owner Printed Name

Firm Name

BONDING COMPANY AUTHORIZATION

Page 2

THIS SECTION IS TO BE COMPLETED BY YOUR BONDING COMPANY:

Name of DBE Applicant Firm: _____

II How long have you been doing business with this DBE Applicant firm: _____

II Identify the individuals in the DBE applicant firm who are authorized to sign bonds:

a. Identify the individuals in the above firm who negotiate the bond limit:

2. What is the current bonding limit?

Per project? _____ Aggregate? _____

3. What factors did you consider in underwriting the bonds?

Financial Statements: Yes [] No []

Contract Amounts: Yes [] No []

Experience and Ability of Owners: Yes [] No []

List the individual(s) and the significant expertise which you considered:

4. Identify the individual(s) and/or any company which has signed the General Indemnity Agreement:

BONDING COMPANY AUTHORIZATION

Page 3

5. Identify any individuals(s) and/or company which is a guarantor on any bond:

Company Name _____

Address _____

City/State/Zip _____

Company Official _____ Date _____
(Printed Name)

Company Official _____ Date _____
(Signature)

Mail this completed form to:

Utah Department of Transportation
Attn: Civil Rights Office
Box 141520
4501 South 2700 West
Salt Lake City, UT 84114-1520

DOCUMENTATION CHECKLIST

Place an "X" by the items you have completed and submitted with this application to ensure that all requested information has been included. Each item is referenced to the appropriate question(s) in the application form. Any missing documentation will only delay the processing of your application or may be grounds for denial of your application for DBE certification. Not all of these items may apply to your application.

Please make sure that all copies of documentation are complete, clear, and legible.

1. [] Documentation of social and economic disadvantage if you are seeking certification as other than a female or minority (See eligibility standards) (#7)
2. [] Proof of membership status such as tribal enrollment, birth certificates showing family ancestry, non-resident visa, naturalization papers, passport, armed services discharge papers, baptismal certificate, current photo, membership letter or certification by an ethnic organization, etc. (#7)
3. [] Proof of lawful permanent resident status (#8)
4. [] Rental agreements for office/warehouse/yard space (#15, 16, 17, 44)
5. [] Current SBA 8(a) certification (#19)
6. [] Current DBE certification from home state Department of Transportation (out-of-state firms only) (#19)
7. [] Verification from home state Department of Transportation that an on-site review has been conducted by that agency. (out-of-state firms only) (#19)
8. [] Correspondence regarding decertification or denial of DBE certification/recertification (#20)
9. [] Financial Institution Authorization sent to financial institution (#22)
10. [] Bonding Company Authorization sent to bonding company (#23)
11. [] Description of real estate and proof of ownership (#25)
12. [] Proof of contributions to acquire ownership for all owners (#25)
13. [] Loan agreements, promissory notes and security agreements (#28)
14. [] Most recent financial statement (if available) including income statement, balance sheet, profit and loss statement (#30, 37, 40, 43, 44)
15. [] Business Federal income tax returns, including all attached schedules, for the last three years (#30, 37, 40, 43, 44)
16. [] Detailed current resumes (training and experience) for all owners, officers, directors, managers and professional personnel (#33, 38, 39, 40, 44)
17. [] Licenses, certifications, registrations, permits, etc. held by owners, managers and professional employees (#33, 43, 44, 57 58, 59)

18. [] Articles of incorporation and any amendments (#37)
19. [] Corporation bylaws and any amendments (#37)
20. [] Minutes of initial corporate organizational meeting (#37)
21. [] Stock certificates (both sides) (#37)
22. [] Stock transfer ledger (#37)
23. [] Proof of stock purchase and payment (#37)
24. [] Minutes of stockholder and board of directors meetings for the last three years (#37)
25. [] Shareholder agreements (#37)
26. [] For Corporations, Partnerships, and Limited Liability Companies, personal income tax returns with all attached schedules for all owners/partners/members for the last three years (#37, 40, 44)
27. [] Initial partnership agreement and all amendments (#40)
28. [] Limited Liability Company Articles of Organization (#44)
29. [] Profit sharing plan (if applicable) (#37, 40, 44)
30. [] Buy out plan (if applicable) (#37, 40, 44)
31. [] Purchase agreement/court decree or order if existing business was bought or acquired through inheritance or court settlement (#27, 37, 40, 43, 44)
32. [] Agreements for manufacturers, distributors, wholesalers, dealers, franchisers, etc. (#46)
33. [] Copies of titles/registration for all vehicles/trailers/equipment which require titles/registration (#52)
34. [] Bills of sale/purchase agreements and canceled checks showing payment for equipment purchased in last three years (#52)
35. [] Lease agreements for all leased equipment/vehicles (#54)
36. [] List of most recent projects on which work has been performed (#61)
37. [] Affidavit signed by all owners and notarized
38. [] Determination of Social and Economic Disadvantage Affidavit.
39. [] Personal Net Worth Statement.

THIS APPLICATION AND ALL DOCUMENTATION SHOULD BE SENT TO:

Utah Department of Transportation
Attention: Civil Rights Office
Box 141520
4501 South 2700 West
Salt Lake City, UT 84114-1520

Participation by Disadvantaged Business Enterprises in Department of Transportation Programs

Applicable certification information taken from Code of Federal Regulations (CFR) 49, Part 26

SUBPART A - GENERAL

26.1 What are the objectives of this part?

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

26.5 What do the terms used in this part mean?

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

- (1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

- (i) One concern controls or has the power to control the other; or
- (ii) A third party or parties controls or has the power to control both; or
- (iii) An identity of interest between or among parties exists such that affiliation may be found.

- (2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian

Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

Compliance means that a recipient has correctly implemented the requirements of this part.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged business enterprise or DBE means a for-profit small business concern --

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual . As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U. S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site (www.ntis.gov/naics).

Primary recipient means a recipient which DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-a-side means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or SBA means the United States Small Business Administration.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do

PART D - CERTIFICATION STANDARDS

°26.61 How are burdens of proof allocated in the certification process?

- (a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.
- (b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.
- (c) You must rebuttably presume that members of the designated groups identified in °26.67(a) are socially and economically disadvantaged. This means that they do not have the burden of proving to you that they are socially and economically disadvantaged. However, applicants have the obligation to provide you information concerning their economic disadvantage (see °26.67).
- (d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)
- (e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

°26.63 What rules govern group membership determinations?

- (a) If you have reason to question whether an individual is a member of a group that is presumed to be socially and economically disadvantaged, you must require the individual to demonstrate, by a preponderance of the evidence, that he or she is a member of the group.

(b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.

(1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

(2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of §26.89.

§26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. You must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$16.6 million. The Secretary adjusts this amount for inflation from time to time.

§26.67 What rules determine social and economic disadvantage?

(a) Presumption of disadvantage.

(1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(i) You must require each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification to submit a signed, notarized statement of personal net worth, with appropriate supporting documentation.

(ii) In determining net worth, you must exclude an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). A contingent liability does not reduce an individual's net worth. The personal net worth of an individual claiming to be an Alaska Native will include assets and income from sources other than an Alaska Native Corporation and exclude any of the following which the individual receives from any Alaska Native Corporation: cash (including cash dividends on stock received from an ANC) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per annum; stock (including stock issued or distributed by an ANC as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from an ANC as a dividend or distribution on stock); and an interest in a settlement trust.

(b) Rebuttal of presumption of disadvantage.

(1) If the statement of personal net worth that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$750,000, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of §26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$750,000, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

(c) 8(a) and SDB Firms. If a firm applying for certification has a current, valid certification from or recognized by the SBA under the 8(a) or small and disadvantaged business (SDB) program (except an SDB certification based on the firm's self-certification as an SDB), you may accept the firm's 8(a) or SDB certification in lieu of conducting your own certification proceeding, just as you may accept the certification of another DOT recipient for this purpose. You are not required to do so, however.

(d) Individual determinations of social and economic disadvantage. Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$750,000 shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of Appendix E of this part.

§26.69 What rules govern determinations of ownership?

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole.

(b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

(1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

(2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

(3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

(c) The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

(d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if -

(1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

(2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

(e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

(f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

(1) The owner's expertise must be --

(i) In a specialized field;

(ii) Of outstanding quality;

(iii) In areas critical to the firm's operations;

(iv) Indispensable to the firm's potential success;

(v) Specific to the type of work the firm performs; and

(vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

(2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

(g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual --

(1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or

(2) Through inheritance, or otherwise because of the death of the former owner.

(1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is --

(i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

(ii) Involved in the same or a similar line of business; or

(iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

(2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that -

(i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

(i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

(j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because --

(1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;

(2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

*26.71 What rules govern determinations concerning control?

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

(3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

(4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

(c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in §26.69(j)(2).

(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of directors.

(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

(g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

(h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

(1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

(2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

(j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

(1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

(2) If you cannot determine that the socially and economically disadvantaged owners -- as distinct from the family as a whole -- control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to you, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

(m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You may not, in this situation, require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not

consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

°26.73 What are other rules affecting certification?

(a) (1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

(2) You may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

(b) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part. Nor must you refuse to certify a firm solely on the basis that it is a newly formed firm.

(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

(d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm -- even a DBE firm -- cannot be an eligible DBE.

(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

EXAMPLE 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

EXAMPLE 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

EXAMPLE 3: Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

EXAMPLE 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

EXAMPLE 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

EXAMPLE 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of §26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

(g) You must not require a DBE firm to be prequalified as a condition for certification unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.

(h) A firm that is owned by an Indian tribe, Alaska Native Corporation, or Native Hawaiian organization as an entity, rather than by Indians, Alaska Natives, or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of §26.65. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in §26.71.

- (a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.
- (b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.
- (c) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:
 - (1) Perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their resumes and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;
 - (2) If the firm is a corporation, analyze the ownership of stock in the firm;
 - (3) Analyze the bonding and financial capacity of the firm;
 - (4) Determine the work history of the firm, including contracts it has received and work it has completed;
 - (5) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;
 - (6) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;
 - (7) Require potential DBEs to complete and submit an appropriate application form.
 - (I) Uniform form [reserved]
 - (ii) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.
 - (iii) You must review all information on the form prior to making a decision about the eligibility of the firm.
- (d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.
- (e) When another DOT recipient has certified a firm, you have discretion to take any of the following actions:
 - (1) Certify the firm in reliance on the certification decision of the other recipient;
 - (2) Make an independent certification decision based on documentation provided by the other recipient, augmented by any additional information you require the applicant to provide; or
 - (3) Require the applicant to go through your application process without regard to the action of the other recipient.
- (f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.
- (g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

(h) Once you have certified a DBE, it shall remain certified for a period of at least three years unless and until its certification has been removed through the procedures of §26.87. You may not require DBEs to reapply for certification as a condition of continuing to participate in the program during this three-year period, unless the factual basis on which the certification was made changes.

(i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.

(1) Changes in management responsibility among members of a limited liability company are covered by this requirement.

(2) You must attach supporting documentation describing in detail the nature of such changes.

(3) The notice must take the form of an affidavit sworn to by the owners of the firm before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under §26.109(c).

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts. If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).

(k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under §26.89.

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

Social Disadvantage

I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) Education. Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) Employment. Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) Business history. The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

II. With respect to paragraph I.A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities - especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments) - may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

Economic Disadvantage

(a) General. Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(B) Submission of narrative and financial information.

(1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) When married, an individual claiming economic disadvantage also must submit separate financial information for his or her spouse, unless the individual and the spouse are legally separated.

(C) Factors to be considered. In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

D) Transfers within two years. Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).